

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL A. CISNEROS,

Petitioner,

v.

JIM ROBERTSON,

Respondent.

Case No. [20-cv-07861-HSG](#)

**ORDER DENYING PENDING
MOTIONS**

Re: Dkt. Nos. 12, 13

Petitioner, an inmate at Pelican Bay State Prison, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This order addresses the two recently filed motions. Dkt. Nos. 12, 13. Petitioner has filed a motion titled “Motion to Motion The Petition and Grant Petition Under The Petition Requirements That The Respondent Had The Time of 90 Days to State Its Reason If Not Grant The Petition” (Dkt. No. 12), arguing that the petition should be granted because Respondent has not timely filed an answer, and a motion titled “Motion To Motion . . . A Statement of Additional Grounds” (Dkt. No. 13), seeking to add a statement of additional grounds to the petition.

Dkt. No. 12 is DENIED because Respondent’s answer is not due until April 23, 2021. *See* Dkt. No. 5. The order to show cause was issued on January 22, 2021, and gave Respondent until April 23, 2021 to answer. Dkt. No. 5. Pursuant to Rule 5(a) of the Rules Governing Section 2254 Cases in the United States District Courts, the respondent is not required to answer the petition unless a judge so orders. Rule 5(a) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. Pursuant to N.D. Cal. Habeas L.R. 2254-6, after the Court orders a response to the petition, a respondent shall respond to the petition within 60 days of service of a noncapital petition, subject to modification by the assigned Judge. N.D. Cal. Habeas L.R. 2254-6. Here, the undersigned

1 modified the deadline and ordered Respondent to respond by April 23, 2021, and there is no
 2 indication in the record that Respondent has been served. Respondent's answer is not untimely.
 3 Moreover, a court may not grant a federal habeas petition simply because a respondent has not
 4 answered. A federal district court may only grant federal habeas relief to a state prisoner who is in
 5 custody in violation of the Constitution or laws or treaties of the United States, 28 U.S.C.A.
 6 § 2241, and with respect to claims where the state court adjudication of the claim resulted in a
 7 decision that was contrary to, or involved an unreasonable application of, clearly established
 8 Federal law, as determined by the Supreme Court of the United States; or resulted in a decision
 9 that was based on an unreasonable determination of the facts in light of the evidence presented in
 10 the State court proceeding, 28 U.S.C. § 2254.

11 Dkt. No. 13 is denied because, as explained in the Court's February 16, 2021 Order, a
 12 petitioner may not present arguments in miscellaneous unsolicited pleadings filed throughout the
 13 course of the action. Dkt. No. 9. The Court will only consider arguments that are presented in the
 14 operative petition which is currently Dkt. No. 1. **The Court will not consider pleadings setting**
 15 **forth general arguments, and will not consider arguments set forth in miscellaneous**
 16 **pleadings**, such as Dkt. Nos. 3, 4, 10, 13.

17 In the Court's February 16, 2021 Order, the Court warned Petitioner that his repeated
 18 filings have only served to clutter the record and have served no legal purpose. Dkt. No. 9.
 19 Petitioner has filed at least seven pleadings in this court which he has titled motions, but which
 20 either repeat arguments previously presented, or improperly seek to add arguments in a piecemeal
 21 fashion, or seek court action that is unnecessary (transfer to court), or misunderstand the relevant
 22 law (arguing that the answer is untimely), or improperly seek court assistance in prosecuting his
 23 case (requesting contact information and name of deputy attorney general assigned to his petition).
 24 The Court will summarily deny any future pleadings that repeat arguments previously presented,
 25 seek to add arguments in a piecemeal fashion, request unnecessary court action, or seek court
 26 assistance in prosecuting his case.


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This order terminates Dkt. Nos. 12, 13.

IT IS SO ORDERED.

Dated: 3/25/2021


HAYWOOD S. GILLIAM, JR.
United States District Judge

United States District Court
Northern District of California